

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:05-cv-00329-GKF-PJC
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXCLUDE
DEFENDANTS' EXPERT REPORT REGARDING THE FEASIBILITY OF
PLAINTIFFS' HYPOTHETICAL ALUM REMEDIATION STRATEGY (Dkt. No. 2242)**

EXHIBIT 7

From: David Chapman [DChapman@stratusconsulting.com]
Sent: Thursday, May 01, 2008 4:25 PM
To: Richard Bishop; Michael Hanemann; Jon Krosnick; Roger Tourangeau; Edward Morey
Cc: Colleen Donovan
Subject: FW: Peer review notes attached
Sensitivity: Confidential
Attachments: 5.1.08 peer review comments.doc

OK Chicken Peer Review notes. I have not reviewed yet.

The attorneys would like to have a call next week to discuss.

The two times they have available are Tuesday after 10 am (Eastern) (and preferably between 10 am and noon) or next Friday morning.

We could make this the focus of our Friday call to give us some time to review and discuss.

Please let me know if you are available either Tuesday or Friday during these times?

Thanks,
David

This electronic message and any attachment's hereto is the property of the sender and may contain information that is confidential or proprietary to sender. It is intended for the exclusive use of the recipient or recipients named above. If you are not an intended recipient of the message, please be advised that you are not authorized to disclose, copy or distribute the message or any information in the message. Please notify the sender of your receipt immediately by return electronic e-mail and delete the message and any attachments). Although this e-mail and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by the sender for any loss or damage arising in any way from its use.

*Privileged and Confidential
Work Product Prepared Under Direction of Counsel
Protected by Federal Rule of Evidence 408*

From: Moll, Ingrid [mailto:imoll@motleyrice.com]
Sent: Thursday, May 01, 2008 3:19 PM
To: David Chapman
Cc: Xidis, Claire
Subject: Peer review notes attached

PRIVILEGED AND CONFIDENTIAL

David:

Please see attached peer review notes. This will help guide the discussion next week.

Kind regards,
Ingrid

Ingrid L. Moll | Attorney at Law | Motley Rice LLC

One Corporate Center, 20 Church St., 17th Flr | Hartford, CT 06103
o. 860.882.1678 | f. 860.882.1682 | imoll@motleyrice.com

Confidential & Privileged

Unless otherwise indicated or obvious from its nature, the information contained in this communication is attorney-client privileged and confidential information/work product. This communication is intended for the use of the individual or entity named above. If the reader of this communication is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies—electronic, paper or otherwise—which you may have of this communication.

**Peer-Review Comments on Status Survey
(Document: Pilot-1_Chicken_Scenario_3.19.08)**

May 1, 2008

Key and Problematic Themes

- A. Inconsistency between very specific and very vague statements of information for elements of the scenario that are equally important.
- B. Is everything factually correct and supportable from historical conditions, to the injury, to the restoration plan to the recovery time? If can not be supported, should not remain in the survey.
- C. Confusing sequencing of presentation of the scenario information.
- D. Lack of information on substitutes and recreation use.

General Comments

- 1. Have you considered oversampling in rural areas or the study area?
- 2. Considered manipulating the order of information and testing order manipulations? For example, current sequence of presentation is the injury and then the plan. What would happen if the sequence was reversed? Can do a split sample in pilot, $n=200$ split $n_i=100$ and $n_j=100$.
- 3. Struck by the complexity of the scenario, lack of definitions of technical terms and confusing sequences of presenting information. Information is presented in pieces that may not be logical or linked, sometimes quickly and other times in tedious detail, and some information is very specific while other information is unacceptably vague. Specific examples later. Concern that respondents are confused, but do not want to fully admit it. They can reiterate facts back to facilitator, but are they putting the whole picture together? Is this leading respondents to vote yes for a good deed, not for the specific scenario?
- 4. Need more questions to break up the flow of information; give respondents time to digest information; and insert questions on comprehension.
- 5. There is no information in the survey about **substitutes** in the survey. What other rivers, creeks and lakes can provide similar ecological habitat and what are their quality levels and threats?
- 6. There are no data collected on recreation use specifically. What if poultry industry brings forward an argument that use has not changed or has increased?

7. Drinking water is not specifically excluded from the scenario, but there are many statements that can lead respondents to think about drinking water, e.g., alum is used to treat drinking water supplies, alum will make water bitter to drink, etc. Are they? Is yes, are they becoming concerned about their own drinking water?

Section 1

8. Global warming is a big issue in the news and is not mentioned Q1-Q6, and title is "ISSUES IN THE NEWS SURVEY". Media is trying to make global warming local. Q2 may not be a good indicator of respondents' environmental concerns.
9. Otherwise, Q1-Q6's are a good balance of issues.
10. Q7-Q12's are good transition issues.
11. Enhance consequentiality, e. g., p. 4 – tell them their vote today will help make decisions on the survey issue and change to an **increase** in taxes. Presentation begs for a statement of how the survey data will be used. **NEED LIST CITES.**
12. Concern about the maps, but may be just because they were not provided with the survey instrument. Will get comments here in the next call with peer reviewers.
13. Add a question on map comprehension to keep the respondents tuned in and to provide a break in the flow of information.
14. p. 5 – Is it correct and is there sufficient data to support equating clear with clean? Are there other effects of poultry litter that would occur even if water was clear? Are there other contaminants remaining in the water after clarity is restored? (For example, the acid rain issue in the northeast.)
15. Do you really want to say smallmouth bass have lived in the river for centuries? Is there data to support these assertions? Do you just want to say for "a very long time"?
16. Need to close out the information before Q14 with a statement of what will happen if nothing is done.
17. Q14 & Q15 are too restrictive. Why limit experiential knowledge to just "sightseeing and recreation"? Are there not other reasons to visit the area and become familiar with these waters? "Are you personally familiar ...?"
18. Do people know the creeks that actually flow into the Illinois River? Is it enough to know they have familiarity with the Illinois River and creeks in that area?

Section 2

19. Is the resolution of photographs portraying algae how it really looks in the water on a typical day? How are you adjusting for sunlight?
20. p.7 – algae is introduced with no definition. Respondents only indirectly find out that there are different types of algae and that more than one type can exist in both the river and the lake. Start with a brief, clear definition and then tell them there are different types before launching in to the site specific descriptions of algae in the river and lake. Respondents are left to base responses on impressions from the pictures and these impressions may vary from respondent to respondent.
21. Add a card that delineates the harmful effects of algae in the river and in the lake.
22. Are there any beneficial effects of algae?
23. p. 10 – similar comments to (2), (3) and (4) for phosphorous and nitrogen.
24. Need to tell respondents at end of this section what would happen if nothing was done, i.e., finish the baseline injury scenario. Respondents do not learn what would happen with natural recovery until page 15.
25. Do full characterizations of the injury, then of the plan, then compare the two. The information is spread around the scenario and is disjointed and confusing.
26. Some respondents may be currently given the impression that the waters have been destroyed and this is causing the higher than expect proportions of “yes” responses to the valuation question.

Section 3

27. p. 10, top – need a graphic showing how chicken numbers have changed over time. What does “increasing number of chickens and turkeys” mean relative to the 150 million number.
28. This entire section is confusing because to the way the information is presented:
 - some information is very specific (e.g., 150 million) while other information is vague (e.g., increasing number),
 - there is static and temporal information, and
 - there are judgmental statements.

The presentation of this information is not logical and is confusing.

29. How confident are you in factual information? A real problem if not all information can be provided with the same level of precision. For example, you

know the chicken numbers, but do not know the number of fish kills. IS there evidence to back up your fish-kill statement?

30. p. 10, before Q19 – what “other animals, insects, and small plants” and affected in what “ways”? Talked about fish but not these other living ecosystem effects.

Section 4

31. p. 12, 2nd para. – You tell the respondent that spreading poultry litter will stop, but do not tell them what will happen to the litter. Only later do you say it will increase cost.
32. What will be the timing of the intervention activities? Immediately after the injunction is approved? This is crucial because timing is the key element of the scenario.
33. What happens if the injunction fails?
34. p.12, 5th par. – tell them here that vote matters and will be an increase in taxes (enhancing consequentiality). Introduce 5-year payment here but do not explain the reason for the 5-year time frame.
35. p.13 – are the alum sensors and dispensers at the border believable and real. Can the poultry industry refute the scenario due to incorrect statements about technology and treatments?
36. We are having trouble with the ban on spreading, treatment activities, and results putting them all together into a logical sequence. There is a timeline for outcomes, but activities are not clearly tied to this timeline. What does “soon after” the ban mean (immediately, this year, ...)? Information seems jumbled.
37. There is a lot of information on pages 13 and 14 with no questions to break it up:
- plan
 - question about plan
 - timing
 - question about timing
 - how implemented
 - question about implementation
 - outcomes
38. Is it possible to do alum even if the ban does not occur? Costly and continuing, but is feasible and are the benefits greater than the costs?

Section 6

- 39. Enhance consequentiality of actions – your responses will affect decision and will be a cost to your household.
- 40. p. 17, top – rationale for 5-year tax paid by public weak and not believable.
Interpreted it as firms would go out of business and that is why public is paying.
- 41. p. 17 – last two bullets too vague → increase taxes, not redistribute.
- 42. p. 18 – Change sequence of valuation question:
 - “In a moment ...” paragraph first.
 - Then “Voting for ...” and “Voting against...”, and randomize the order of these two statements.
- 43. Format W3 so it is more general like V1A and W2. You really want to know responses relative to the injury removing not the alum program.

Section 8

- 44. Add questions that identify if a person has or currently lives on a farm, has a family member who lives on a farm, works on a farm, or lives near a farm. Focus on poultry farms? (See C. Mansfield and V.K. Smith. 2002. “Trade-off at the Trough: TMDLs and the Evolving Status of US Water Quality Policy.” Recent Advances in Environmental Economics.)